IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10218 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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HV BHATT EXECUTIVE (RECORD) GUJARAT SMALL INDUSTRIES - Petitioner
Versus
GUJARAT SMALL INDUSTRIES CORPORATION LTD. & 1 - Respondents

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Appearance :
MR DG CHAUHAN for Petitioner : 1,
MR DC DAVE for Respondent : 1,
MR PV HATHI for Respondent : 2,

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CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 27/07/2007

ORAL JUDGMENT

1. Heard learned counsel for the parties.

2. The petitioner has challenged the order dated 19.11.1998 dismissing him from service. The order of dismissal dated 19.11.1998 was stayed by this Court (Coram: M.R.Calla, J.) vide order dated 13.12.1998 till 17.12.1998. Thereafter, it was continued till 28.12.1998. The matter was again listed for hearing on 5.2.1999 before the Court (Coram: Ms. R.M.Doshit, J.). As it appears from the record, the Court passed an order adjourning the matter to 13.2.1999 and ad-interim relief granted earlier to continue till further orders.

3. This very petitioner had filed another Special Civil Application No. 3928 of 1997 challenging the stoppage of increment and both the matters were ordered to be heard together.

4. In the said matter, Shri Hathi, learned counsel appearing for the respondent No. 2 has filed reply indicating that ultimate order of termination came to be issued on 4.1.2003. Shri Hathi submits in the order dated 4.1.2003 it is stated that pursuant to the stay order granted by this Court, staying the implementation of the order dated

19.11.1998, another departmental enquiry was started for financial irregularities committed by the petitioner in the matter of M/s. Ambica Plastic and during the whole process of enquiry, the petitioner did not attend the same even for a day and the papers sent to him have returned unclaimed from USA and the said enquiry has remained incomplete. The Corporation has received an application for leave from the petitioner on 10.8.2001 stating that there was marriage function in USA and he may be granted leave for 60 days from 27.8.2001 to 25.10.2001 and gave written undertaking dated 25.8.2001 to the effect that he will resume his duties on 26.10.2001 and will not ask for any extension of leave and that the Corporation will be at liberty to take all necessary steps if he fails to resume duties on 26.10.2001 or any date prior thereto. It is submitted that in spite of said undertaking dated 25.8.2001, the petitioner has not resumed his duties and asked for leave on medical grounds from 26.10.2001 to 20.2.2002 and again made an application on 20.2.2002 seeking leave on the ground of his sickness upto 11.4.2002 and the said leave was not sanctioned by the Corporation and thus, the petitioner had remained absent unauthorizedly from 21.2.2002. This order is extensively referred to in the affidavit in reply in the earlier matter, which has been disposed of by this Court today, as having not pressed. Shri Hathi submits a copy of the said order dated 4.1.2003 and the same is ordered to be taken on record.

5. That order dated 4.1.2003 was not challenged by the petitioner and the petitioner had abandoned his service

as he was not interested in resuming his service. It is required to be noted that the petitioner had not challenged the order dated 4.1.2003 in any manner either by filing amendment application or by preferring fresh application. In view of this, the order remains.

6. This Court called upon Shri Chauhan, learned counsel for the petitioner to inform as to whether the order dated 4.1.2003 has been challenged or not in any manner. Shri Chauhan has fairly submitted that this order has not been challenged by the petitioner till date. Shri Chauhan has submitted that however, earlier order impugned in this petition being stigmatic, it cannot be said that the petitioner had given up his cause and though, petitioner has not approached him in writing to pursue the cause but it is his duty to agitate the cause of the petitioner in this petition, wherein, the earlier order is impugned. Shri Chauhan has submitted that the termination order dated 4.1.2003 will amount to merging of the earlier order of dismissal impugned in this petition.

7. Shri Chauhan's submission deserves to be considered.

8. The affidavit filed in earlier petition go to show that respondent Corporation is facing financial crunch and it is stated that only 5 employees are engaged for meeting the requirement of answering the litigation pending and the litigation regarding winding up of this Corporation is pending. The Corporation had also introduced scheme for voluntary retirement way back in the year 1999 due to financial stringency experienced by the Corporation and

almost all the employees were relieved under the said Scheme.

9. Against this backdrop and in light of the order dated 4.1.2003, the challenge to the order of dismissal dated 19.11.1998 deserves to be viewed in its proper perspective. The order dated 19.11.1998 even if set aside, resultant relief cannot be granted in the peculiar facts and circumstances of this case.

10. Shri Chauhan has fairly submitted that if the order dated 19.11.1998 is set aside then at least the petitioner will not live with stigma. Shri Chauhan's submission is misconceived as the order dated 4.1.2003 is passed on account of his absence and his services are terminated for unauthorized absence. Therefore even this order dated 4.1.2003 could be said to be stigmatic. But the same has not been challenged by the petitioner and he has chosen to leave this order as it is. The tanor of the order dated 4.1.2003 go to show that petitioner was in fact not interested in pursuing the litigation any further as he had settled in USA and orders were returned with remarks left and unclaimed. As against this, the situation of the Corporation also deserves to be borne in mind.

11. Shri Hathi has also submitted that there was a preliminary objection in this petition as impugned order dated 19.11.1998 was passed by Managing Director and against this order, an Appeal is provided and petitioner had not availed that remedy and therefore, on this ground also, petition deserves to be dismissed.

12. As it is stated hereinabove, looking to the peculiar facts and circumstances of the case and subsequent conduct of the petitioner of not remaining present before the Corporation despite there was an interim order enuring, wherein, impugned order dated 19.11.1998 was stayed by this Court and by way of application after application for leave, show that he cannot be permitted to invoke equity under Article 226 of the Constitution of India. The Court under Article 226 of the Constitution of India is required to take into consideration the subsequent events and facts attaining this case for examining the challenge to the order dated 19.11.1998. As it is stated hereinabove, the conduct of the petitioner after the order dated 19.11.1998 was stayed, go to show that the petitioner has in fact not been interested in pursuing the litigation and was not interested in serving the Corporation. The subsequent order dated 4.1.2003 go to show that the petitioner had not bothered to explain his unauthorized absence and due to petitioner's unauthorized absence, the order dated 4.1.2003 was required to be passed, which has remained unchallenged as it is stated by learned counsel for the petitioner. In this view of the matter, it cannot be said that the petitioner had abandoned his job with the Corporation. This fact go to show that the examining of challenge to order dated 19.11.1998 would be an exercise in futility and such exercise cannot be undertaken by this Court under Article 226 of the Constitution of India. Therefore, this petition is required to be disposed of. However, this dismissal shall not come in the way of the petitioner if he so chooses to

challenge the subsequent order dated 4.1.2003, if permissible and in accordance with law. This Court has not opined on the merit of the order dated 4.1.2003 as it has remained unchallenged and attained finality.

13. In view of this, the petition deserves to be dismissed and accordingly, it is dismissed with no costs. Rule is discharged. Interim relief, if any, stands vacated.

(S.R.BRAHMBHATT, J.)

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